

Appeals from the January 19, 1990, dismissal by the Grand Junction District Office, Bureau of Land Management, of protests against amendment of right-of-way COC-068328.

Affirmed.

1. Environmental Policy Act--Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements--Rights-of-Way: Act of February 25, 1920--Rights-of-Way: Oil and Gas Pipelines

The National Environmental Policy Act of 1969 requires that every agency study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement applies to the preparation of environmental assessments which serve as a basis for a Finding of No Significant Impact. Under this requirement, all reasonable alternatives must be considered and obvious alternatives may not be ignored. A site which poses sufficiently higher risks to the reliable provision of an essential public service is not a reasonable alternative that must be studied in preparing an environmental assessment for an amendment of a right-of-way for a gas pipeline compressor station.

2. Rights-of-Way: Act of February 25, 1920--Rights-of-Way: Applications--Rights-of-Way: Oil and Gas Pipelines

A Bureau of Land Management decision approving or rejecting an application for a right-of-way or amendment to a right-of-way under 30 U.S.C. § 185 (1982) is an exercise of discretion that will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made in due regard for the public interest, and no sufficient reason to disturb the decision is shown.

APPEARANCES: Robert M. Perry, William Perry, and Judith Fox-Perry, Carbondale, Colorado, pro sese; Cindy Crennen, Denver, Colorado, pro se; Rosamond Turnbull, Carbondale, Colorado, pro se; William and Patricia Fender, Basalt, Colorado, pro sese; Carol J. Johnson, Esq., Lakewood, Colorado, for K & N Energy, Inc.; Charles L. Kaiser, Esq., and Scott W. Hardt, Esq., Denver, Colorado, for Rocky Mountain Natural Gas Company; Lowell L. Madsen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Robert M. Perry and others 1/ have appealed the January 19, 1990, decisions of the District Manager, Grand Junction District Office, Bureau of Land Management (BLM), dismissing their protests against the proposed amendment of Rocky Mountain Natural Gas Company (Rocky Mountain) right-of-way COC-068328 in order to authorize placement of an access road, a compressor building, pipeline connections and valves, a maintenance building, an electric power supply line, a telephone line, a detached cooling unit, and the fencing of the site in the NE¼, sec. 1, T. 8 S., R. 89 W., sixth principal meridian, in Garfield County, Colorado.

By order dated April 12, 1990, we granted the matter expedited consideration on the basis of the statement of Rocky Mountain that, "[i]n order to forestall possible delivery system failure next winter, Rocky Mountain must commence construction of the new compressor station no later than May 1990." See Hoosier Environmental Council, 109 IBLA 160, 164 (1989); Western Gas Supply Co., 86 IBLA 258, 260 (1985). BLM joined Rocky Mountain's request that we expedite consideration. Our review was delayed, however, because we had to request several essential items that were missing from the case record forwarded by BLM. We cannot review what we do not have. 2/

Right-of-way C-068328 was granted to Rocky Mountain for a natural gas pipeline in November 1962 under the authority of the Mineral Leasing Act of

1/ The other appellants are William and Judith Fox-Perry, Cindy Crennen, Rosamond Turnbull, and William and Patricia Fender.

2/ The Board's Docket Attorney called the Grand Junction District Office, BLM, and requested the July 28, 1989, draft Environmental Assessment (EA); the letters of comment on that document; the Sept. 7, 1989, final EA and the accompanying Sept. 11, 1989, Record of Decision signed by the Glenwood Springs Resource Area Manager; and the Sept. 28, 1989, final EA. These materials were received on Apr. 30, 1990. On May 3, 1990, the Docket Attorney requested and the Board received by telefax portions of the 1988 Glenwood Springs Resource Management Plan dealing with Visual Resource Management.

We remind BLM that "it is essential to the proper functioning of the Department's administrative review process that all agencies whose decisions are subject to appeal to the Board * * * forward the complete, original administrative record to the Board within ten business days of receipt of a notice of appeal." Utah Chapter Sierra Club, 114 IBLA 172, 175 (1990). (Emphasis added.)

1920, 30 U.S.C. § 185 (1982), for lands in sec. 21, T. 8 S., R. 86 W., and secs. 1 and 2, T. 8 S., R. 89 W., sixth principal meridian. In April 1989 Rocky Mountain filed an application with BLM to amend the right-of-way in order to add a second pipeline in secs. 1 and 2, T. 8 S., R. 89 W., and to add a compressor station in sec. 1. 3/

In May 1989 representatives of BLM and Rocky Mountain met with members of the Perry families at the site -- located west of Carbondale, Colorado, on public land near County Road 108 in the Edgerton Creek area -- that was originally proposed for the compressor station. Rocky Mountain explained the need for the facility in order to meet increased demand; it selected the proposed site "due to its location on public lands with an existing right-of-way and off of the higher elevations on the White River Forest." See Memorandum to Case File dated May 31, 1989, by Dan Sokal, BLM Natural Resources Specialist. The Perrys expressed concerns about the potential effects of the compressor at the proposed site, including noise, interference with present and future uses of their property, and devaluation of property values, and suggested alternative locations. Rocky Mountain expressed its concerns about the extra costs and delay posed by the alternatives.

On June 1, 1989, BLM wrote Rocky Mountain stating that the alternative locations "will become alternatives to the proposed action in our environmental assessment" and requesting specified information to assist BLM in evaluating the alternatives. Rocky Mountain responded by letters dated June 9 and 15, and July 18. On July 31 BLM issued a draft EA of the proposed action and two alternative locations for the compressor station and requested comments from the public by August 17. Approximately 50 people, including appellants, filed protests of the proposed action; several people also signed a petition opposing one of the alternative sites.

On August 29, 1989, BLM's Area Manager and District Manager met with Rocky Mountain officials, visited the proposed sites, and visited the residence of Margaret Leggett near one of the proposed alternative sites. A draft final EA No. CO-077-9-37, dated September 7, 1989, and accompanying Record of Decision recommending denial of the proposed action granting the application to amend the right-of-way at the proposed site was signed on September 11, 1989, by the Area Manager of the Glenwood Springs Resource Area, BLM, and sent to the District Manager. The September 7, 1989, EA analyzed the proposed site, one alternative site on private land (the valve station site), one alternative site on public land (the Ridgetop site), and

3/ On Sept. 14, 1989, BLM amended the right-of-way to authorize the additional pipelines. That work was completed in October 1989. Although BLM has proposed authorizing the amendment of right-of-way COC-068328 to include the Ridgetop compressor site, it is not clear whether authorization for use of that site should take the form of an amendment to the original grant or be a separate grant with a separate serial number. See BLM Manual 2801.41E3, Nonlinear Rights-of-Way, and BLM Manual 2801.41E4, Linear Rights-of-Way.

a "no action" alternative under which the application to amend the right-of-way at the proposed site would be denied. Apparently the District Manager did not agree with the Area Manager, and a revised final EA, dated September 28, 1989, was prepared analyzing the proposed site and the same alternatives.

On October 3, 1989, representatives of Rocky Mountain met with the BLM District Manager and Area Manager and members of the Perry family, Margaret Leggett, and other adjoining property owners to discuss the alternative sites and to visit the proposed site and the alternative Ridgetop site. As a result of the consensus reached at the October 3, 1989, meeting, the BLM District Manager signed a Record of Decision on October 30, 1989, that

[a]uthorized construction and use of the proposed compressor station and related facilities on public lands as described under the Ridgetop Alternative subject to the attached stipulations. The letters received from the public which are considered to be protests are dismissed and will be issued decisions and rationale.

On January 19, 1990, the BLM District Manager issued decisions on the letters filed in response to the July 31, 1989, EA:

Rocky Mountain Natural Gas [RMNG] has since changed their preferred location from the proposed meadow site to the location on top of the ridgetop as defined in Alternative #3 in our environmental analysis. This change of location is a result of a compromise accepted by both Rocky Mountain Natural Gas Company, Mr. Robert Perry, and the Bureau of Land Management.

The noise impact on the human environment would be least at this site, which maximizes the distance from all sensitive areas. Sound emissions are not expected to be audible at any of the private residences or the county road. The ridgetop site is approximately 2500 feet from the nearest residence to the east, 5100 feet from the nearest residence to the west, and 1000 feet from the county road. This location will result in the least amount of environmental impacts of the three alternatives and the proposed action.

Based on the above reasons, the protest is dismissed and our intention is to amend the right-of-way to authorize construction of the compressor station facility at the ridgetop site subject to stipulations attached to the right-of-way grant.

It is from these decisions that appellants filed notices of appeal. 4/

4/ On Jan. 19, 1990, the District Manager also issued a decision offering the right-of-way for the compressor station and related facilities. The decision allowed Rocky Mountain 30 days from receipt to sign and return the right-of-way and stated the grant would become effective on the date it

Before these decisions were issued -- on December 12, 1989 -- an event took place that is important to understanding the genesis of these appeals. According to an affidavit by the Perrys:

1. On the night of December 12, 1989, we attended a meeting at the U.S. Forest Service Office, 620 Main St., Carbondale, Colorado 81623.

2. The meeting was a public hearing to gather information and comment about whether Rocky Mountain Natural Gas Company should be allowed to plow the Four Mile Road to their compressor station in Wolf Creek.

3. Towards the end of the meeting the three of us questioned RMNG employees Tom Boita and Bill Stanley about RMNG's long range plans for the Wolf Creek area.

4. In response to our questions, Tom Boita and Bill Stanley stated that RMNG was considering drilling two new storage wells in the Wolf Creek area. They also stated that RMNG would need to service its existing wells in the Wolf Creek area on a daily basis throughout the winter.

5. Bill Stanley unequivocally stated that RMNG employees would be visiting the Wolf Creek wells regardless of where the new compressor station was located.

(Affidavit of Robert M., William, and Judy-Fox Perry dated Apr. 3, 1990).

From appellants' viewpoint, the import of this information is that if Rocky Mountain plans to visit its Wolf Creek site, the current location of a compressor and gas storage wells, on a daily basis, even though the last part of the Four Mile Road that provides access to it is unimproved and difficult to travel in the wintertime, then it is not necessary to locate a new compressor station anywhere else. 5/

fn. 4 (continued)

was signed by an authorized officer. The document was returned to BLM on Feb. 2, 1990, but was not signed by the District Manager.

5/ The Fenders' notice of appeal states:

"For over twenty years - since 1962, we believe - the gas company has been able to make daily trips to a compressor located where it bothers no one, either visually or aurally. The company was not exactly honest in not explaining this until December, 1989. We cannot understand why it is necessary for them to relocate the compressor in an area totally unsuitable for such structures when they have been able to service their current compressor at a site which impacts no one."

Cindy Crennen's notice of appeal states: "In view of the new information and access issues, it appears the reason to move the compressor is invalid."

Rosamond Turnbull's notice of appeal states:

The Perrys visited the BLM Resource Area office on January 22, 1990, to ask if BLM was aware of Rocky Mountain's plans regarding access to the Wolf Creek site. The Conversation Record prepared by BLM's Dan Sokal of his telephone call that day to Steve Shute, Rocky Mountain's General Manager, relates:

I asked Steve if RMNG would [be] using the Wolf Creek site this year and would be accessing that site every winter. I told [him] that [the] Perrys were in the office for a visit wanting to know why RMNG was plowing the road and accessing Wolf Creek this winter, and if RMNG was accessing Wolf Creek every winter, then the compressor should have been located there.

Steve said that the plowing of the Wolf Creek road and their operations were abnormal for this year. He said they were operating the compressor along with the field work this year only. He said that next year they won't be plowing the road because the new compressor station will be in place. This year they are running Wolf Creek station and using Carbondale station as a back up. Steve Shute said that in [the] past, they have used Carbondale as the primary compressor and Wolf Ck. station as a back up. They are worried about being able to provide gas, especially to Aspen[,] if the Carbondale unit failed. They would have only six hours to get the Wolf Creek unit in operation before their gas line would dry up. To get to Wolf Creek in the winter could take several hrs. and/or may not even be access[i]ble. So, this year they would use Wolf Creek as primary compressor and the Carbondale unit as a back-up.

Steve said they do not intend to plow the road to Wolf Creek every year. They can access the field storage area facilities by Snow Cat.

A note on the Conversation Record with the Perrys, under Action Taken, states: "I called Bob Perry on 1/25/90 and related to him what we'd learned. He still doesn't believe the gas co. but thanked me for getting back."

Like the other appellants, the Perrys' notices of appeal argue that the fact Rocky Mountain plans to visit the Wolf Creek site during the winter on a daily basis makes it unnecessary to locate a compressor station

fn. 5 (continued)

"The facts presented by the gas company prior to Dec. 1989 led one to believe that they had to move their compressors due to access problems with the present site. It now appears that the Rocky Mt. Gas Co. will still travel to their present site on a daily basis to check on their gas wells and this eliminates the need to relocate their compressors closer to inhabited areas."

elsewhere. In their Reply Brief, citing Hoosier Environmental Council, *supra*, the Perrys argue:

In previous cases, the Board has held that a party challenging a decision by the BLM to grant a right-of-way must show that the decision was based upon a clear error of law, a demonstrable error of fact, or that the BLM's predecisional analysis failed to consider a substantial question of material significance to the decision. * * * [W]e argue that the BLM, in the planning and preparation of its Environmental Assessment (CO-77-9-37) did not meet the third standard * * *. In particular, at no time during this process, that began in April 1989 when Rocky Mountain requested permission to add a new pipeline and build a compressor station, has the agency addressed this dispute's most fundamental issue. That issue is * * *: Has either RMNG or the BLM convincingly demonstrated that RMNG's new compressor cannot be located at the Wolf Creek site where its existing compressor has successfully operated for more than 25 years? The public record shows that the answer is no. [Emphasis in original.]

(Reply Brief at 1-2).

[1] In Hoosier Environmental Council, *supra*, we reviewed challenges to the adequacy of an EA applicable to portions of a proposed natural gas pipeline that crossed Federal lands and the finding of no significant impact (FONSI) based on the EA. There we said:

We have noted that a FONSI will be affirmed if the record establishes that a careful review of environmental problems has been made, relevant areas of environmental concern have been identified, and the final determination that no significant impact will occur is reasonable in light of the environmental analysis. * * * A party challenging a FONSI determination must show that it was premised on clear error of law or demonstrable error of fact or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared.

109 IBLA at 172-73. We referred there, too, to our decision in State of Wyoming Game & Fish Commission, 91 IBLA 364 (1986), in which, "because of a failure to consider a clearly relevant alternative, we set aside a decision to proceed with a timber sale and remanded the case to BLM for the supplementation of the EA." Michael Gold, 108 IBLA 231, 237 (1989).

In State of Wyoming, *supra*, we reviewed the requirements for preparing an EA, 91 IBLA at 367-68, and then discussed "whether the EA considered a proper range of alternatives." *Id.* at 368. The "clearly relevant" alter-native that was not discussed in the EA in that case was one suggested by BLM's wildlife specialist, *i.e.*, delaying the clearcutting of the timber. On appeal, BLM said it had considered that possibility but rejected it; we observed that left the EA without any documentation of the reasons for doing so. "The requirement that appropriate alternatives be studied applies to

the preparation of EA's which serve as a basis for a FONSI," we stated, citing Kelly v. Butz, 404 F. Supp. 925, 934-35 (W.D. Mich. 1975). "Under this requirement all reasonable alternatives must be considered (North Slope Borough v. Andrus, 486 F. Supp. 326, 330 (D.D.C. 1979)) and obvious alternatives may not be ignored (California v. Bergland, 483 F. Supp. 465, 488 (E.D. Cal. 1980))." 91 IBLA at 369.

In this case Robert Perry stated in his August 16, 1989, response to the July 31, 1989, EA:

I urge you to ask the Rocky Mtn. Gas Co to locate their new compressor site north of the existing Gas Co facility [i.e., the valve station alternative]. I understand it may be more expensive, but they should just accept this as a cost of doing business. They do have the alternative of leaving their com-pressors at their present locations.

The Perrys and Margaret Leggett also agreed on a statement that was read at the outset of the October 3, 1989, "summit meeting" requesting that "the proposed Rocky Mountain Natural Gas Company compressor station remain at the current site in the Four Mile area unless complete and compelling reasons can be delivered by the gas company with economic and engineering reports as to why the site must be moved." 6/ The Perrys contend that in "failing to independently verify the gas company's contention that the existing Wolf Creek station was an inappropriate site for the new compres-sor, [BLM] 'failed to consider a substantial question of material signi-ficance' and thus invalidated the entire EA process and the decisions that flowed from it" (Reply Brief at 4-5).

We cannot agree that BLM failed to analyze a clearly relevant alterna-tive in conducting its EA of the possible locations of the compressor station. The impetus for adding compressor capacity and for locating the new compressor at an easily accessible site was the sudden winter storm in February 1989 that brought 18 inches of snow and temperatures well below zero. As a result of that storm, it took a crew of six men 9 hours to reach the Wolf Creek site. See Crystal Summit Meeting [Oct. 3, 1989], Outline of Major Points. This reason was communicated to all parties at the first meeting to discuss alternatives, on May 31, 1989, and was iterated in Rocky Mountain's June 9, 1989, response to BLM's request for information about the alternatives proposed at that meeting. BLM's draft EA dated July 28, 1989, adverted to the need for ready access in stating the purpose and need for the action:

With increased population and growth in RMNGC's service area, the current use and demand for natural gas is close to the capacity of the transmission system. The RMNGC nearly failed to deliver gas in some areas during peak loads in the winter of 1988. * * *

6/ The "Four Mile area" is approximately 2 miles north of the Wolf Creek site on Forest Service Road 300 and is presumably a reference to it.

The RMNGC set out to locate an accessible site economical to develop and operate, and with minimum environmental impact.

(July 28, 1989, EA No. CO-077-9-37, at 1). This statement of need did not change materially in the subsequent three revisions of the EA. 7/

Nor does the information which has been represented as having been presented by Rocky Mountain at the December 1989 Forest Service meeting indicate that the Wolf Creek site is a reasonable alternative. It is clear from the record that Rocky Mountain's arrangements to plow the road to the Wolf Creek site during the winter of 1989-90 were provisional. Accessibility and safety are relative matters. Although the Wolf Creek site can be reached by Snow Cat during the winter without plowing the road, and may in fact be visited daily by Rocky Mountain personnel, we are persuaded that that site entails sufficiently higher risks to the reliable provision of an essential public service as to be an unreasonable alternative. "[T]he Wolf Creek site lacks the immediate access that is necessary to ensure compressor repairs that are essential for reliable gas service. * * * Based on my experience in the industry, I believe that no responsible natural gas supplier would site such a critical station in such an inaccessible location" (Paragraph 22, Affidavit of Steve Shute, Rocky Mountain General Manager, dated March 21, 1990).

[2] In his notice of appeal, Robert Perry also gives as reasons for his appeal the fact that the access road to the Ridgetop site "will be very visible to anyone going up and down the valley and will be subject to transient dumping and trashing" and the fact that neither BLM nor Rocky Mountain has offered to compensate adjoining property owners for the devaluation of their property. 8/ The Fenders' notice of appeal also urges consideration of "the noise levels and structures which will intrude on a peaceful valley."

BLM's October 18, 1989, EA acknowledges that "[t]he access road cuts and fills on the steep slope would be highly visible from Road 108 and the private residence west of the proposed site. Visual impact of the access road would attract attention and exceed VRM [Visual Resource Management]

7/ In the Sept. 28 and Oct. 18 versions of the EA, the final sentence quoted reads: "The RMNGC located what they believe to be an accessible site economical to develop and operate, and with minimum environmental impact."

8/ The Oct. 18, 1989, EA acknowledged the possibility of a negative effect on property values from locating the compressor station at either the proposed site or the valve station site, but does not mention the subject in its analysis of the Ridgetop alternative. Even if property values were devalued as a result of locating the station at the Ridgetop site, however, we are not authorized to direct compensation from either BLM or Rocky Mountain.

Class II objectives" (EA at 12). BLM's October 30, 1989, Record of Decision repeats this observation and adds:

The visual impact may be reduced in the long-term by revegetation, however, successful revegetation on the cuts and fills is expected to be slow and cannot be guaranteed. While projects that are determined to be incompatible with VRM objectives may be rejected (page 38, Glenwood Springs Resource Management Plan, Revised 1988), the need for the compressor station and public benefit overrides the VRM objectives.

Concerning noise, the EA states that locating the compressor station at the proposed site

would generate noise emissions primarily from the natural gas powered engine and exhaust, and the radiator fan. Although two compressors would be installed, only one would be in operation at any given time, with the second used as backup. At worst, the proposed compressor station would produce sound emissions similar to those of the existing compressor facilities at Wolf Creek and Catherine Store. Sound emission levels from these compressors are shown on the tables in Appendix A. Actual emissions from the proposed compressor would be lower. At worst, sound emissions from the compressor could occur 24 hours a day and 365 days a year; [n]o sound emissions would occur during the 2 to 4 week periods during the spring and fall when the compressor equipment is expected to be idle. No effect is anticipated on public health and safety, although some interference with dispersed recreational activity could occur near the site. Sound emissions would be about 51 dBA and audible along Road 108; emissions would be less than 35 dBA and not likely to be audible at the residence west of the site.

(EA at 12). At the Ridgetop site "[s]ound emissions * * * would be similar to the proposed action. However, the distance from all sensitive areas (the County road, the residence west of the proposed site, the residence near the Valve Station site, potential trail route) would be increased, with corresponding attenuation of sound levels." Id. at 13.

BLM's Record of Decision states that "[t]he noise impact on the human environment would be least at the Ridgetop Site, which maximizes the dis-tance from all sensitive areas."

Sound emissions are not expected to be audible at any of the private residences or the country road. The ridgetop site is approximately 2500' from the nearest residence to the east, 5,100' from the nearest residence to the west, and 1,000' from the county road. In addition, sound attenuation by the topography and existing vegetation would minimize noise impacts.

Special Stipulation 1.c. in the proposed right-of-way document requires Rocky Mountain to submit an Access Road Plan and provides that BLM may

consider standards in addition to the design standards set forth in section 9113 of the BLM Manual. Special Stipulation 10 provides:

The sound emission objective will be to make the compressors inaudible 90% of the time at the nearest existing occupied residence. The inaudibility objective will be fulfilled when the measured sound levels, and the predicted sound levels using mathematical calculations are 35dbA or less at the residence, and subjective noise evaluation is completed and satisfied 25 feet from the residence in the direction of the compressors.

A sound study shall be conducted by [Rocky Mountain] to analyze sound emissions, project noise impacts, and identify mitigating measures.

After installation of the compressor, sound measurements shall be taken to identify the actual noise emissions of the equipment in normal operation. Additional sound measurements are required after any modifications or replacement to the equipment.

BLM's Record of Decision concludes: "It is in the overall public interest, therefore, to authorize the construction of the compressor at the Ridgetop site, subject to the attached stipulations * * *."

A BLM decision approving or rejecting an application for a right-of-way or amendment to a right-of-way under 30 U.S.C. § 185 (1982) is an exercise of discretion that will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Western Gas Supply Co., 86 IBLA at 261; P & O Falco, Inc., 78 IBLA 128, 131 (1983); Fuel Resources Development Co., 59 IBLA 378, 379-80 (1981). In this case, considering the October 18, 1989, EA, the Record of Decision, and the Special Stipulations included in the Right-of-Way Grant Amendment, we hold that BLM's approval of the application to amend the right-of-way at the Ridgetop site should be affirmed.

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the January 19, 1990, decisions dismissing appellants' protests are affirmed.

Will A. Irwin
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge